

AMENDED IN SENATE JULY 9, 1997
AMENDED IN ASSEMBLY MAY 20, 1997
AMENDED IN ASSEMBLY APRIL 22, 1997
AMENDED IN ASSEMBLY APRIL 7, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 1374

Introduced by Assembly Member Hertzberg

February 28, 1997

An act to amend Section 1033.5 of, and to add and repeal Title 11.5 (commencing with Section 1770) ~~to~~ of Part 3 of, the Code of Civil Procedure, and to amend Section 68616 of the Government Code, relating to mediation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1374, as amended, Hertzberg. Court mediation proceedings.

(1) Existing law authorizes the courts in the County of Los Angeles and other courts that elect to participate to order specified civil actions to mediation.

This bill would require the superior courts in the County of Los Angeles ~~and authorize other superior courts~~ to refer civil actions and proceedings to an early status conference at which the court could refer the parties to early mediation, as specified. The bill would require the Judicial Council to report to the Legislature on or before January 1, ~~2002~~ 1999, concerning mediation conducted under the bill. These

provisions of the bill would be repealed on January 1, 2003 2001. The bill would impose a state-mandated local program because it would impose new or additional duties on court personnel by requiring the mediation program in the County of Los Angeles.

(2) Existing law prohibits any trial court status conference from being required sooner than 30 days after service of the first responsive pleading or sooner than 30 days after expiration of a stipulated continuance.

This bill would instead prohibit a status conference from being required sooner than 90 days after filing of the complaint.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1033.5 of the Code of Civil
2 Procedure is amended to read:

3 1033.5. (a) The following items are allowable as costs
4 under Section 1032:

5 (1) Filing, motion, and jury fees.

6 (2) Juror food and lodging while they are kept
7 together during trial and after the jury retires for
8 deliberation.

9 (3) Taking, videotaping, and transcribing necessary
10 depositions including an original and one copy of those
11 taken by the claimant and one copy of depositions taken
12 by the party against whom costs are allowed, and travel
13 expenses to attend depositions.

14 (4) Service of process by a public officer, registered
15 process server, or other means, as follows:



1 (A) When service is by a public officer, the
2 recoverable cost is the fee authorized by law at the time
3 of service.

4 (B) If service is by a process server registered pursuant
5 to Chapter 16 (commencing with Section 22350) of
6 Division 8 of the Business and Professions Code, the
7 recoverable cost is the amount actually incurred in
8 effecting service, including, but not limited to, a stakeout
9 or other means employed in locating the person to be
10 served, unless such charges are successfully challenged by
11 a party to the action.

12 (C) When service is by publication, the recoverable
13 cost is the sum actually incurred in effecting service.

14 (D) When service is by a means other than that set
15 forth in subparagraph (A), (B), or (C), the recoverable
16 cost is the lesser of the sum actually incurred, or the
17 amount allowed to a public officer in this state for such
18 service, except that the court may allow the sum actually
19 incurred in effecting service upon application pursuant
20 to paragraph (4) of subdivision (c).

21 (5) Expenses of attachment including keeper's fees.

22 (6) Premiums on necessary surety bonds.

23 (7) Ordinary witness fees pursuant to Section 68093 of
24 the Government Code.

25 (8) Fees of expert witnesses ordered by the court.

26 (9) Transcripts of court proceedings ordered by the
27 court.

28 (10) Attorney's fees, when authorized by any of the
29 following:

30 (A) Contract.

31 (B) Statute.

32 (C) Law.

33 (11) Court reporter's fees as established by statute.

34 (12) Models and blowups of exhibits and photocopies
35 of exhibits may be allowed if they were reasonably helpful
36 to aid the trier of fact.

37 (13) The mediator's fee paid pursuant to Title 11.5
38 (commencing with Section 1770) of Part 3.

1 (14) Any other item that is required to be awarded to
2 the prevailing party pursuant to statute as an incident to
3 prevailing in the action at trial or on appeal.

4 (b) The following items are not allowable as costs,
5 except when expressly authorized by law:

6 (1) Fees of experts not ordered by the court.

7 (2) Investigation expenses in preparing the case for
8 trial.

9 (3) Postage, telephone, and photocopying charges,
10 except for exhibits.

11 (4) Costs in investigation of jurors or in preparation for
12 voir dire.

13 (5) Transcripts of court proceedings not ordered by
14 the court.

15 (c) Any award of costs shall be subject to the following:

16 (1) Costs are allowable if incurred, whether or not
17 paid.

18 (2) Allowable costs shall be reasonably necessary to
19 the conduct of the litigation rather than merely
20 convenient or beneficial to its preparation.

21 (3) Allowable costs shall be reasonable in amount.

22 (4) Items not mentioned in this section and items
23 assessed upon application may be allowed or denied in
24 the court's discretion.

25 (5) When any statute of this state refers to the award
26 of "costs and attorney's fees," attorney's fees are an item
27 and component of the costs to be awarded and are
28 allowable as costs pursuant to subparagraph (B) of
29 paragraph (10) of subdivision (a). Any claim not based
30 upon the court's established schedule of attorney's fees
31 for actions on a contract shall bear the burden of proof.
32 Attorney's fees allowable as costs pursuant to
33 subparagraph (B) of paragraph (10) of subdivision (a)
34 may be fixed as follows: (A) upon a noticed motion, (B)
35 at the time a statement of decision is rendered, (C) upon
36 application supported by affidavit made concurrently
37 with a claim for other costs, or (D) upon entry of default
38 judgment. Attorney's fees allowable as costs pursuant to
39 subparagraph (A) or (C) of paragraph (10) of subdivision
40 (a) shall be fixed either upon a noticed motion or upon

1 entry of a default judgment, unless otherwise provided by
2 stipulation of the parties.

3 Attorney's fees awarded pursuant to Section 1717 of the
4 Civil Code are allowable costs under Section 1032 as
5 authorized by subparagraph (A) of paragraph (10) of
6 subdivision (a).

7 SEC. 2. Title 11.5 (commencing with Section 1770) is
8 added to Part 3 of the Code of Civil Procedure, to read:

9
10 TITLE 11.5. EARLY MEDIATION
11

12 1770. (a) Except as provided in this title, all civil
13 actions and proceedings in a participating court where
14 the amount in controversy exceeds fifty thousand dollars
15 (\$50,000) shall be referred to an early status conference,
16 which shall serve as the court's initial status conference
17 and at which the court shall determine whether to refer
18 the parties to an early mediation in accordance with this
19 title.

20 (b) The participating courts shall be the superior court
21 ~~in Los Angeles County and other superior courts that~~
22 ~~elect to apply this title.~~ *in Los Angeles County.*

23 (c) "Mediation" means a process in which a neutral
24 person or persons facilitate communication between the
25 parties to a dispute to assist them in reaching a mutually
26 acceptable agreement.

27 (d) The determination of the amount in controversy
28 shall be made in the same manner as provided in Section
29 1141.16 and in making this determination the court shall
30 not consider the merits of questions of liability, defenses,
31 or comparative negligence.

32 1770.1. The early status conference shall be scheduled
33 not earlier than 90 days and not later than 150 days of the
34 filing date of the complaint. However, at or before the
35 conference, any party may request that the early status
36 conference be continued on the grounds that the party
37 has been unable to serve an essential party to the
38 proceeding.

39 The court shall not refer the parties to an early
40 mediation at the early status conference where the court,

1 in its discretion, determines that there is good cause for
2 not ordering the early mediation.

3 1770.2. The court shall schedule the early mediation
4 within 60 days following the early status conference
5 ~~unless the parties stipulate to a later date that is within 120~~
6 ~~unless any party requests a later date that is within 150~~
7 days following the early status conference or the court
8 finds, for good cause, that a later date is necessary, or
9 where counsel, a party, or the mediator is unavailable
10 during that time period, or the court finds that discovery
11 reasonably necessary for a meaningful mediation cannot
12 be conducted prior to the end of that period.

13 1770.3. At the early status conference, where the
14 court refers the parties to an early mediation, the court
15 shall designate a mediator who has been agreed upon by
16 the parties to the proceeding, or failing an agreement,
17 who is selected by the court from the names of mediators
18 submitted by the parties. In those instances where the
19 parties are unable to reach agreement, each party shall
20 present to the court at the status conference the names,
21 addresses, and billing rates of no more than three
22 individuals, whom that party represents in writing to the
23 court would be available to conduct the mediation within
24 the next 60 days. At or before the status conference, each
25 party shall be entitled to strike two names from each of
26 the other parties' lists, and those individuals shall not be
27 considered as a mediator. Each party shall serve its list of
28 potential mediators on all other parties to the proceeding
29 no later than seven court days before the status
30 conference.

31 ~~1770.4. The court shall schedule the early mediation~~
32 ~~within 60 days following the early status conference~~
33 ~~unless it finds, for good cause, that a later date is~~
34 ~~necessary, or where counsel, a party, or the mediator is~~
35 ~~unavailable during that time period, or the court finds~~
36 ~~that discovery reasonably necessary for a meaningful~~
37 ~~mediation cannot be conducted prior to the end of that~~
38 ~~period.~~

39 1770.5. The mediation shall not exceed six hours in
40 length unless the parties otherwise agree.

1 1770.6. Trial counsel, parties, and persons with full
2 authority to settle the case shall personally attend the
3 mediation, unless excused by the court for good cause. If
4 any consent to settle is required for any reason, the party
5 with that consent authority shall be personally present at
6 the mediation. *If all trial counsel, parties, or persons with*
7 *full authority to settle a case are not personally present at*
8 *the mediation, unless excused by the court for good cause,*
9 *the party who is in compliance with this section may*
10 *immediately terminate the mediation.*

11 1770.7. (a) In the event that the parties to the
12 mediation are unable to reach a mutually acceptable
13 agreement and any party to the mediation wishes to
14 terminate the mediation *at any time*, the mediator shall
15 file a statement of nonagreement. This statement shall be
16 on a form developed by the Judicial Council.

17 (b) Upon the filing of a statement of nonagreement,
18 the matter shall be calendared for trial, by court or by
19 jury, both as to law and fact, insofar as possible, so that the
20 trial shall be given the same place on the active list as it
21 had prior to mediation, or the matter shall receive civil
22 priority on the next setting calendar.

23 1770.8. All statements made by the parties during the
24 mediation shall be subject to Sections 1152 and 1152.5 of
25 the Evidence Code and, if Assembly Bill 939 of the
26 1997–98 Regular Session is enacted and becomes
27 operative, shall be subject to the provisions of Section
28 703.5 of, and Chapter 2 (commencing with Section 1115)
29 of Division 9 of, the Evidence Code, other than the
30 provisions in Sections 1118 and 1125 of, the Evidence
31 Code.

32 1771. Each party to the proceeding shall share equally
33 in the fee of the mediator, except where the parties agree
34 otherwise. The obligation of the parties for the mediator's
35 fee is limited to six hours of actual mediation, and does not
36 include preparation time, travel time, and postmediation
37 time, unless the parties agree otherwise. If the dispute is
38 not resolved by the mediation, the prevailing party in the
39 civil proceeding shall be entitled, as a matter of right, to
40 recover his or her share of the fee as costs of the

1 proceeding under Section 1032. *Disputes regarding fees*
2 *shall be settled by the court.*

3 1771.1. Notwithstanding Section 1771, any party who
4 has been granted permission to proceed in forma
5 pauperis shall not be required to share in the payment of
6 the mediator's fee.

7 1771.2. Unless expressly provided otherwise by
8 statute or any local rule that is in effect on January 1, 1998,
9 any party who participates in a mediation under this title,
10 or who has ~~completed~~ *participated* in a voluntary
11 mediation with all of the other parties, is exempt from
12 being compelled to participate in any other judicially
13 ordered arbitration or mediation.

14 1771.3. An appearance at an early status conference
15 or mediation ordered under this title shall not be deemed
16 a general appearance and does not constitute a waiver of
17 the right to make a motion under Section 418.10.

18 1771.4. This title does not apply to any of the
19 following:

20 (a) Juvenile and probate proceedings, proceedings
21 under the Family Code, and special proceedings of a civil
22 nature under Part 3 (commencing with Section 1063).

23 (b) Any proceeding subject to judicial arbitration
24 pursuant to Chapter 2.5 (commencing with Section
25 1141.10) of Title 3 or mediation pursuant to Title 11.6
26 (commencing with Section 1775).

27 (c) Any case assignment to a particular judge or judges
28 based on subject matter.

29 (d) Any proceeding in which a government entity is
30 a party unless the attorney for that entity agrees that the
31 entity shall participate.

32 1771.5. Nothing in this title shall be construed to
33 preempt other current or future alternative dispute
34 resolution programs operating in the trial courts.

35 1771.6. Nothing in this title precludes all or some of
36 the parties to a proceeding from voluntarily agreeing to
37 mediate their dispute at any time.

38 1771.7. The Judicial Council may adopt any rules
39 necessary or appropriate to implement this title.



1 1771.8. Any reference to the mediation during any
2 subsequent trial shall constitute an irregularity in the
3 proceedings of the trial for purposes of Section 657.

4 1771.9. On or before January 1, ~~2002~~ 1999, the Judicial
5 Council shall submit a report to the Legislature
6 concerning mediation conducted pursuant to this title.
7 This report shall include, but not be limited to, a review
8 of the program in Los Angeles County and other courts
9 that have elected to apply this title. The report shall
10 examine, among other things, the effect of this title on the
11 other judicial mediation programs of courts and the costs
12 of the mediation to the parties and an estimate of the costs
13 avoided, if any, both to the parties and to the courts
14 because the parties used mediation instead of litigation to
15 resolve the dispute. The Judicial Council shall, by rule,
16 require that each court applying this title to file with the
17 Judicial Council data that will enable the Judicial Council
18 to submit the report required by this section.

19 1772. This title shall remain in effect only until
20 January 1, ~~2003~~ 2001, and as of that date is repealed, unless
21 a later enacted statute, which is enacted before January
22 1, ~~2003~~ 2001, deletes or extends that date.

23 SEC. 3. Section 68616 of the Government Code, as
24 amended by Section 16 of Chapter 1159 of the Statutes of
25 1996, is amended to read:

26 68616. Delay reduction rules shall not require shorter
27 time periods than as follows:

28 (a) Service of the complaint within 60 days after filing.
29 Exceptions, for longer periods of time, may be granted as
30 authorized by local rule.

31 (b) Service of responsive pleadings within 30 days
32 after service of the complaint. The parties may stipulate
33 to an additional 15 days. Exceptions, for longer periods of
34 time, may be granted as authorized by local rule.

35 (c) Time for service of notice or other paper under
36 Sections 1005 and 1013 of the Code of Civil Procedure and
37 time to plead after service of summons under Section
38 412.20 of the Code of Civil Procedure shall not be
39 shortened except as provided in those sections.

1 (d) Within 30 days of service of the responsive
2 pleadings, the parties may, by stipulation filed with the
3 court, agree to a single continuance not to exceed 30 days.

4 It is the intent of the Legislature that these stipulations
5 not detract from the efforts of the courts to comply with
6 standards of timely disposition. To this extent, the Judicial
7 Council shall develop statistics that distinguish between
8 cases involving, and not involving, these stipulations.

9 (e) No status conference, or similar event, other than
10 a challenge to the jurisdiction of the court, may be
11 required to be conducted sooner than 90 days after the
12 filing of the complaint.

13 (f) Article 3 (commencing with Section 2016) of
14 Chapter 3 of Title 3 of Part 4 of the Code of Civil
15 Procedure shall govern discovery, except in arbitration
16 proceedings, and the time periods set forth in that article
17 may not be shortened by local rule.

18 (g) An order referring an action to arbitration or
19 mediation may be made at any status conference held in
20 accordance with subdivision (e), provided that any
21 arbitration ordered may not commence prior to 210 days
22 after the filing of the complaint, exclusive of the
23 stipulated period provided in subdivision (d). Any
24 mediation ordered pursuant to Section 1775.3 of the Code
25 of Civil Procedure may be commenced prior to 210 days
26 after the filing of the complaint, exclusive of the
27 stipulated period provided in subdivision (d). No rule
28 adopted pursuant to this article may contravene Sections
29 638 and 639 of the Code of Civil Procedure.

30 (h) Unnamed (DOE) defendants shall not be
31 dismissed prior to the conclusion of the introduction of
32 evidence at trial, except upon stipulation or motion of the
33 parties.

34 (i) Notwithstanding Section 170.6 of the Code of Civil
35 Procedure, in direct calendar courts, challenges pursuant
36 to that section shall be exercised within 15 days of the
37 party's first appearance. Master calendar courts shall be
38 governed solely by Section 170.6 of the Code of Civil
39 Procedure.



1 (j) This section applies to all cases subject to this article
2 which are filed on or after January 1, 1991.

3 (k) This section shall remain in effect only until
4 January 1, 1999, and as of that date is repealed, unless a
5 later enacted statute, which is enacted before January 1,
6 1999, deletes or extends that date.

7 SEC. 4. Section 68616 of the Government Code as
8 amended by Section 17 of Chapter 1159 of the Statutes of
9 1996, is amended to read:

10 68616. Delay reduction rules shall not require shorter
11 time periods than as follows:

12 (a) Service of the complaint within 60 days after filing.
13 Exceptions, for longer periods of time, may be granted as
14 authorized by local rule.

15 (b) Service of responsive pleadings within 30 days
16 after service of the complaint. The parties may stipulate
17 to an additional 15 days. Exceptions, for longer periods of
18 time, may be granted as authorized by local rule.

19 (c) Time for service of notice or other paper under
20 Sections 1005 and 1013 of the Code of Civil Procedure and
21 time to plead after service of summons under Section
22 412.20 of the Code of Civil Procedure shall not be
23 shortened except as provided in those sections.

24 (d) Within 30 days of service of the responsive
25 pleadings, the parties may, by stipulation filed with the
26 court, agree to a single continuance not to exceed 30 days.

27 It is the intent of the Legislature that these stipulations
28 not detract from the efforts of the courts to comply with
29 standards of timely disposition. To this extent, the Judicial
30 Council shall develop statistics that distinguish between
31 cases involving, and not involving, these stipulations.

32 (e) No status conference, or similar event, other than
33 a challenge to the jurisdiction of the court, may be
34 required to be conducted sooner than 90 days after the
35 filing of the complaint.

36 (f) Article 3 (commencing with Section 2016) of
37 Chapter 3 of Title 3 of Part 4 of the Code of Civil
38 Procedure shall govern discovery, except in arbitration
39 proceedings, and the time periods set forth in that article
40 may not be shortened by local rule.

1 (g) No case may be referred to arbitration prior to 210
2 days after the filing of the complaint, exclusive of the
3 stipulated period provided for in subdivision (d). No rule
4 adopted pursuant to this article may contravene Sections
5 638 and 639 of the Code of Civil Procedure.

6 (h) Unnamed (DOE) defendants shall not be
7 dismissed prior to the conclusion of the introduction of
8 evidence at trial, except upon stipulation or motion of the
9 parties.

10 (i) Notwithstanding Section 170.6 of the Code of Civil
11 Procedure, in direct calendar courts, challenges pursuant
12 to that section shall be exercised within 15 days of the
13 party's first appearance. Master calendar courts shall be
14 governed solely by Section 170.6 of the Code of Civil
15 Procedure.

16 (j) This section applies to all cases subject to this article
17 which are filed on or after January 1, 1991.

18 (k) This section shall become operative on January 1,
19 1999.

20 SEC. 5. No reimbursement is required by this act
21 pursuant to Section 6 of Article XIII B of the California
22 Constitution because the only costs that may be incurred
23 by a local agency or school district are the result of a
24 program for which legislative authority was requested by
25 that local agency or school district, within the meaning of
26 Section 17556 of the Government Code and Section 6 of
27 Article XIII B of the California Constitution.

28 Notwithstanding Section 17580 of the Government
29 Code, unless otherwise specified, the provisions of this act
30 shall become operative on the same date that the act
31 takes effect pursuant to the California Constitution.